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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,429	03/02/2004	Enrico Fin	60130-1940	3774
26096	7590	05/23/2006		
CARLSON, GASKEY & OLDS, P.C. 400 WEST MAPLE ROAD SUITE 350 BIRMINGHAM, MI 48009			EXAMINER VANterPOOL, LESTER L	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 05/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/791,429		FIN, ENRICO	
	<b>Examiner</b>		<b>Art Unit</b>	
	Lester L. Vanterpool		3727	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____ .   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>March 2, 2004</u> .   | 6) <input type="checkbox"/> Other: ____.                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 – 6, 8 – 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Won et al., (U.S. Patent Number 6029873). Won et al., discloses the plurality of rack elements (28, 30, 80 & 82) movable between the stowed position (See Figure 4 & 6) where at least a portion of the rack elements (28, 30, 80 & 82) are disposed below the plane define by the roof surface (12) (See Figure 1, 4 & 6), and the deployed position where the rack elements (28, 30, 80 & 82) are spaced away from the plane (12) (column 2, line 33 – 36). See Figures 1, 5 & 7.

Regarding claim 2 as stated above, Won et al., discloses the plurality of recesses (16, 17, 84 & 86) within the roof surface to receive the rack elements (28, 30, 80 & 82) (column 2, line 19 – 21). See Figure 1.

Regarding claim 3 as stated above, Won et al., discloses the recesses (16, 17, 84 & 86) are formed as continuous portion of the roof surface (12). See Figure 1.

Regarding claim 4 as stated above, Won et al., discloses portion of the recesses (16, 17, 84 & 86) are disposed below the plane (12). See Figures 1, 4 – 7.

Regarding claim 5 as stated above, Won et al., discloses the rack elements (28, 30, 80 & 82) are stowable at least partially within the recess (16, 17, 82 & 86) with the portion of the rack elements (28, 30, 80 & 82) are disposed below the plane (12) (column 2, line 36 – 37). See Figures 4 & 6.

Regarding claim 6 as stated above, Won et al., discloses the portion of the rack elements (28, 30, 80 & 82) comprise the portion of the roof surface (12). See Figure 1.

Regarding claim 8 as stated above, Won et al., discloses the rack elements (28, 30, 80 & 82) comprise lateral (80 & 82) and longitudinal (28 & 30) elements. See Figures 1 & 2.

Regarding claim 9 as stated above, Won et al., discloses the drive (38) to move the rack elements (28, 30, 80 & 82) between the stowed and deployed positions (column 2, line 45 – 48). See Figures 2 – 7.

Regarding claim 10, Won et al., discloses the roof surface (12) that defines the plane (See Figures 1 & 2) and the plurality of recesses (16, 17, 82 & 84) disposed

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below the plane (column 2, line 19 – 21) (See Figures 1, 4 & 6); and the corresponding plurality of rack elements (28, 30, 80 & 82) movable between the stowed position (column 2, line 33 - 36) wherein the rack elements (28, 30, 80 & 82) are at least partially received within the plurality of recesses (16, 17, 82 & 84) (See Figure 4 & 6) and the deployed position spaced apart from the roof surface (12) (See Figures 1, 2, 5 & 7).

Regarding claim 11 as stated above, Won et al., discloses portion of the rack elements (28, 30, 80 & 84) are received within the recess (16, 17, 82 & 84) and another portion is disposed at least partially above the plane (column 2, line 40 – 44).

Regarding claim 12 as stated above, Won et al., discloses the portion of the recess (16, 17, 82 & 84) below the plane comprises an uninterrupted transition with the roof surface (12). See Figures 1 – 7.

Regarding claim 13 as stated above, Won et al., discloses the rack elements (28, 30, 80 & 82) form the portion of the surface (12) of the roof assembly (10). See Figures 1 & 2.

Regarding claim 14 as stated above, Won et al., discloses the rack elements (28, 30, 80 & 82) comprise longitudinal (28 & 30) and lateral (80 & 82) members. See Figures 1 & 2.

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Regarding claim 15 as stated above, Won et al., discloses the drive (38) to move the rack elements (28, 30, 80 & 82) between stowed and deployed positions (column 2, line 45 – 48). See Figures 1 – 7.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 7, 16 - 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Won et al., (U.S. Patent Number 6029873) in view of Foster et al., (U.S. Patent Number 5096106). Won et al., discloses the invention substantially as claimed.

However, Won et al., does not disclose the rack elements comprise a generally oval shape.

Foster et al., teaches the rack elements (16, 18 & 20) comprise the generally oval shape (See Figures 1 – 5) for the purpose of providing wind deflection and exterior contour finishing appeal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the rack elements comprise the

generally oval shape as taught by Foster et al., with the roof rack assembly of Won et al., in order to enhance wind aerodynamics and exterior product finishing appeal.

Regarding claim 16, Won et al., discloses the rack elements (28, 30, 80 & 82) and recesses (16, 17, 84 & 86).

However, Won et al., does not disclose rack elements comprise an oval cross-section and recesses comprise of corresponding oval shape.

Foster et al., teaches the rack element (16, 18 & 20) comprise an oval cross-section (20) (See Figures 1 – 5) for the purpose of providing wind deflection and exterior contour finishing appeal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the rack elements comprise an oval cross-section as taught by Foster et al., with the roof rack assembly of Won et al., in order to enhance wind aerodynamics and exterior product finishing appeal.

Furthermore, Won et al., does not discloses the recesses comprise the corresponding oval shape. It would have been obvious matter of design choice to make the recesses comprise the corresponding oval shape, since applicant has not disclosed that recesses comprising the corresponding oval shape solves any stated problem or is for any particular and it appears that the invention would perform equally well with substantially rectangular recesses as taught by Won et al.

Regarding claim 17, Won et al., discloses the plurality of rack elements (28, 30, 80 & 82) movable between the stowed position (column 2, line 33 – 37) (See Figure 1)

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where at least a portion of the rack elements (28, 30, 80 & 82) are disposed below the surface of the vehicle roof (12) (column 2, line 40 – 44) (See Figures 4 & 6), and the deployed position (See Figures 1, 5 & 7) where the rack elements (28, 30, 80 & 82) are spaced apart from the surface of the vehicle roof (12) (See Figures 1, 5 & 7).

However, Won et al., does not disclose the rack elements comprising an oval cross-section.

Foster et al., teaches the rack elements (16, 18 & 20) comprise an oval cross-section (20) (See Figures 1 – 5) for the purpose of providing wind deflection and exterior finishing appeal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the rack elements comprise an oval cross-section as taught by Foster et al., with the roof rack assembly of Won et al., in order to enhance wind aerodynamics and exterior product finishing appeal.

Regarding claim 18 as stated above, Won et al., discloses the electric motor (40) driving (38) the rack elements (28, 30, 80 & 82) between the stowed and deployed positions (column 2, line 45 – 68). See Figures 1 – 7.


Regarding claim 19 as stated above, Won et al., discloses the rack elements (28, 30, 80 & 82) provide continuous surface corresponding with the vehicle roof (12) when in the stowed position. See Figures 1 & 2.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lester L. Vanterpool whose telephone number is 571-272-8028. The examiner can normally be reached on Monday - Friday (8:30 - 5:00) EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**JES F. PASCUA**  
**PRIMARY EXAMINER**

LLV  
May 10, 2006